Presented By: Rana Jabir Abbas

ENGLISH TRANSLATION WITH ARABIC TEXT

WASA'IL AL-SHIA VOL. 22

SECTION 6

Ila (Oath Of Sexual Abstinence) And Expiations

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HADITH COMPILED BY

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Section 6

Ila (Oath Of Sexual Abstinence) And Expiations

CHAPTER 1

Ila Does Not Occur Without An Oath, And If A Husband Abandons His Wife For A Year Or More, He Is Compelled After Four Months To Either Have Intercourse Or Divorce Her If The Woman Does Not Have Patience

[Hadith 28743 to 28744]

Hadith 28743

عن الحلبي قال: سألت أبا عبدالله (عليه السلام) عن الرجل يهجر امرأته من غير طلاق ولا يمين سنة، فلا يأتي فراشه؟ قال: ليأت أهله. وقال (عليه السلام): أيما رجل آلى من امرأته ـ والايلاء أن يقول: والله لا اجامعك كذا وكذا، والله لاغيظنك، ثمّ يغاضبها ـ فانه يتربص به أربعة أشهر.

From al-Halabi who said: I asked Abu Abdullah (peace be upon him) about a man who abandons his wife without divorce and without an oath for a year, so he does not come to her bed? He said: Let him come to his family. And he (peace be upon him) said: Any man who makes ila against his wife - and ila is that he says: "By Allah, I will not have intercourse with you for such and such time," "By Allah, I will anger you," then he becomes angry with her - then he is given a waiting period of four months.

Hadith 28744

عن ابن أبي عمير، عن حفص بن البختري، عن أبي عبدالله (عليه السلام)، قال: إذا غاضب الرجل امرأته فلم يقربها من غير يمين أربعة أشهر استعدت عليه، فاما أن يفيء، وإما أن يطلّق، فان تركها من غير مغاضبة أو يمين فليس بمؤل.

From Ibn Abi Umayr, from Hafs ibn al-Bukhtari, from Abu Abdullah (peace be upon him), who said: When a man becomes angry with his wife and does not approach her without an oath for four months, she may seek judicial remedy against him, so that he either returns (to her) or divorces her. But if he leaves her without anger or an oath, then he is not considered to be in a state of ila.

أقول: وتقدم ما يدل على جواز ترك الجماع أربعة أشهر لا أزيد، ويأتي ما يدل عليه.

I (Hurr Amili) say: What has preceded indicates the permissibility of abandoning intercourse for four months, no more, and what follows will indicate this as well.

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CHAPTER 2

There Is No Sin Or Blame Upon The Mu'li (The One Who Takes An Oath Of Abstinence) During The Four Months Or After Them, If The Wife Remains Silent And Is Content And Does Not Take The Matter To Court

[Hadith 28745 to 28745]

Hadith 28745

وبريد بن معاوية، عن أبي جعفر، وأبي عبدالله (عليهما السلام) أنهما قالا: إذا آلى الرجل أن لا يقرب امرأته فليس لها قول، ولا حق في الاربعة أشهر، ولا إثم عليه في كفه عنها في الاربعة أشهر،

Yazid ibn Mu'awiya reported from Abu Ja'far and Abu Abdullah (peace be upon them both) that they said: When a man takes an oath not to approach his wife, she has no say and no right during the four months, and there is no sin upon him for abstaining from her during the four months.

فان مضت الاربعة أشهر قبل أن يمسها فسكتت ورضيت فهو في حل وسعة، فان رفعت أمرها، قيل له: إما أن تفيء فتمسها، وإما أن تطلق، وعزم الطلاق: أن يخلي عنها، فاذا حاضت وطهرت طلقها،

If the four months pass before he touches her and she remains silent and is content, then he is free and at ease. But if she brings her case forward, it is said to him: Either you return (to your wife) and touch her, or you divorce. And the resolve to divorce means that he releases her - when she menstruates and becomes pure, he divorces her. He has more right to take her back as long as three menstrual periods have not passed.

وهو أحق برجعتها ما لم تمض ثلاثة قروء، فهذا الايلاء الذي أنزله الله تعالى في كتابه وسنة رسوله (صلى الله عليه وآله).

This is the ila (oath of abstinence) that Allah the Exalted revealed in His Book and the Sunnah of His Messenger (peace and blessings be upon him and his family).

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CHAPTER 3

That Ila Is Only Validly Established By Allah And His Specific Names

[Hadith 28746 to 28747]

Hadith 28746

عن محمّد بن مسلم، قال: قلت لابي جعفر (عليه السلام): قول الله عزّ وجلّ (والليل إذا يغشى)، (والنجم إذا هوى)، وما أشبه ذلك، فقال: لله أن يقسم من خلقه بما يشاء، وليس لخلقه أن يقسموا إلا به.

From Muhammad ibn Muslim, he said: I said to Abu Ja'far (peace be upon him): Regarding Allah's saying, the Mighty and Majestic: "By the night when it covers" [Quran, 92:1], "By the star when it descends" [Quran, 53:1], and similar verses. He said: It is for Allah to swear by whatever He wills from His creation, but it is not for His creation to swear except by Him.

Hadith 28747

عن الحلبي، عن أبي عبدالله (عليه السلام)، قال: لا أرى أن يحلف الرجل إلا بالله.

From al-Halabi, from Abu Abdullah (peace be upon him), he said: I do not see that a man should swear except by Allah.

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CHAPTER 4

That Ila Is Not Established When Intended For Reconciliation, But Only When Intended For Harm

[Hadith 28748 to 28748]

Hadith 28748

عن السكوني، عن أبي عبدالله (عليه السلام)، قال: أتى رجل أمير المؤمنين (عليه السلام)، فقال: يا أمير المؤمنين إن امرأتي أرضعت غلاما، وإني قلت: والله لا أقربك حتى تفطميه، فقال: ليس في الاصلاح إيلاء.

From al-Sakuni, from Abu Abdullah (peace be upon him), who said: A man came to Amir al-Mu'minin (peace be upon him) and said: O Amir al-Mu'minin, my wife has nursed a boy, and I said: "By Allah, I will not approach you until you wean him." He (Ali) said: There is no ila in reconciliation.

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CHAPTER 5

That Ila Only Occurs When One Swears To Abandon Sexual Relations For More Than Four Months, Or Swears Absolutely

[Hadith 28749 to 28750]

Hadith 28749

عن الحلبي، عن أبي عبدالله (عليه السلام) ـ في حديث ـ قال: أيما رجل آلى من امرأته فانه يتربص بها أربعة أشهر، ثمّ يؤخذ بعد الاربعة أشهر ـ إلى أن قال: ـ فان لم يفىء جبر على الطلاق.

From al-Halabi, from Abu Abdullah (peace be upon him) - in a hadith - he said: Any man who takes an oath of ila from his wife, he waits with her for four months, then he is taken to account after the four months - until he said - if he does not return (to his wife), he is compelled to divorce.

Hadith 28750

عن زرارة، عن أبي جعفر (عليه السلام)، قال: قلت له: رجل آلى أن لا يقرب امرأته ثلاثة أشهر، قال فقال: لا يكون ايلاء حتى يحلف على أكثر من أربعة أشهر.

From Zurarah, from Abu Ja'far (peace be upon him), he said: I said to him: A man took an oath not to approach his wife for three months. He said: There is no ila until he swears for more than four months.

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CHAPTER 6

That Ila Does Not Take Effect Except After Consummation

[Hadith 28751 to 28754]

Hadith 28751

عن عمر بن اذينة قال: لا أعلمه إلا عن زرارة، عن أبي عبدالله (عليه السلام)، قال: لا يكون مؤليا حتى يدخل.

From Umar ibn Udhayna who said: I do not know it except from Zurarah, from Abu Abdullah (peace be upon him), who said: One does not become a muli (one who takes an oath of abstinence) until he has consummated the marriage.

Hadith 28752

عن أبي الصباح الكناني، عن أبي عبدالله (عليه السلام)، قال: لا يقع الايلاء إلا على امرأة قد دخل بها زوجها.

From Abu al-Sabah al-Kinani, from Abu Abdullah (peace be upon him), who said: Ila does not take effect except upon a woman with whom her husband has consummated the marriage.

Hadith 28753

عن أبي الصباح، عن أبي عبدالله (عليه السلام)، قال: سئل أمير المؤمنين (عليه السلام) عن رجل آلى من امرأته ولم يدخل بها، قال: لا ايلاء حتى يدخل بها، فقال: أرأيت لو أن رجلا حلف أن لا يبني بأهله سنتين أو أكثر من ذلك، أكان يكون ايلاء؟

From Abu al-Sabbah, from Abu Abdullah (peace be upon him), who said: Amir al-Muminin (peace be upon him) was asked about a man who made an oath of ila' (abstaining from his wife) from his wife without having consummated the marriage with her. He said: There is no ila until he has consummated the marriage with her. Then he said: What do you think if a man swore not to have intercourse with his wife for two years or more than that - would that be considered ila?

Hadith 28754

عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: قلت له: الرجل يؤلي من امرأته قبل أن يدخل بها، فقال: لا يقع الايلاء حتى يدخل بها.

From Abu Basir, from Abu Abdullah (peace be upon him), who said: I said to him: A man who makes ila' from his wife before consummating the marriage with her. He said: Ila' does not take effect until he has consummated the marriage with her.

أقول: وتقدم ما يدل على ذلك في الظهار، ويأتي ما يدل عليه في اللعان.

I (Hurr Amili) say: What has preceded indicates this regarding zihar (a form of divorce declaration), and what will come indicates this regarding li'an (mutual cursing between spouses).

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CHAPTER 7

That Ila Does Not Apply To A Slave Woman

[Hadith 28755 to 28755]

Hadith 28755

عبدالله بن جعفر في (قرب الإسناد): عن أحمد بن محمّد بن عيسى، عن أحمد بن محمّد بن أبي نصر، عن الرضا (عليه السلام)، قال: سألته عن الرجل يؤلي من أمته، فقال: لا. كيف يؤلي، وليس لها طلاق؟ !.

Abdullah ibn Ja'far in "Qurb al-Isnad": from Ahmad ibn Muhammad ibn Isa, from Ahmad ibn Muhammad ibn Abi Nasr, from al-Rida (peace be upon him), he said: I asked him about a man who takes an oath of abstinence (ila) from his slave woman, so he said: No. How can he take an oath of abstinence when she has no divorce?

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CHAPTER 8

On The Ruling That One Who Takes An Oath Of Abstinence (Ml) Is Given An Ultimatum After Four Months From The Time Of The Oath, Not Before, When The Wife Brings A Complaint. If She Delays Even For A Long Period, It Is Permissible For Her To Bring A Complaint, And He Must Be Given An Ultimatum.

[Hadith 28756 to 28762]

Hadith 28756

عن الحلبي، عن أبي عبدالله (عليه السلام) ـ في حديث ـ قال: أيما رجل آلى من امرأته ـ والايلاء أن يقول: والله لا اجامعك كذا وكذا، والله لاغيظنك ثمّ يغاضبها ـ فانه يتربص به أربعة أشهر ثمّ يؤخذ بعد الاربعة أشهر فيوقف، فاذا فاء ـ وهو أن يصالح أهله ـ فان الله غفور رحيم،

From al-Halabi, from Abu Abdullah (peace be upon him) - in a hadith - he said: Any man who takes an oath of abstinence from his wife - and the oath of abstinence is when he says: By Allah, I will not have intercourse with you for such and such time, or By Allah, I will anger you, then he becomes angry with her - he is given a waiting period of four months, then after the four months he is seized and given an ultimatum. If he returns - which means he reconciles with his family - then Allah is Forgiving, Merciful.

وإن لم يفيء اجبر على الطلاق، ولا يقع بينهما طلاق حتى يوقف، وإن كان أيضا بعد الاربعة الاشهر ثمّ يجبر على أن يفيء، أو يطلق.

But if he does not return, he is compelled to divorce. No divorce occurs between them until he is given an ultimatum, even if it is after the four months, then he is compelled either to return or to divorce.

Hadith 28757

عن أبي الجارود، أنه سمع أبا جعفر (عليه السلام) يقول في الايلاء يوقف بعد سنة، فقلت: بعد سنة؟ فقال: نعم، يوقف بعد سنة.

From Abu al-Jarud, that he heard Abu Ja'far (peace be upon him) say regarding the oath of abstinence: He is given an ultimatum after a year. So I said: After a year? He said: Yes, he is given an ultimatum after a year.

قال الشيخ: هذا لا ينافي ما قدمناه ؛ لانه لم يذكر أنه إذا كان قبل ذلك لا يوقف، وإنما يدل الخطاب على ذلك، ونحن ننصرف عن دليل الخطاب بدليل، وقد قدمناه.

The Shaykh said: This does not contradict what we have presented before, because he did not mention that if it was before that time he would not be given an ultimatum. Rather, the discourse

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only indicates that, and we turn away from the implication of the discourse based on evidence, which we have already presented.

Hadith 28758

عن يونس بن يعقوب، عن أبي مريم (أنه سأله) عن رجل آلى من امرأته قال: يوقف قبل الاربعة أشهر وبعدها.

From Yunus ibn Ya'qub, from Abu Maryam (that he asked him) about a man who takes an oath of abstinence (ila') from his wife. He said: He is given an ultimatum before the four months and after them.

أقول: حمله الشيخ على أنه يؤخذ قبل الاربعة أشهر لضرب المدة، لا لالزامه بالطلاق أو الفيئة، وجوز حمله على اجتماع الظهار والايلاء ؛ لما تقدم في الظهار من أن مدته ثلاثة أشهر.

I (Hurr Amili) say: The Shaykh interpreted this as meaning he is summoned before the four months to set the time limit, not to compel him to divorce or to return (to his wife), and he allowed interpreting it as referring to the combination of zihar and ila', based on what was mentioned previously regarding zihar that its period is three months.

Hadith 28759

عن عثمّان بن عيسى، عن أبي الحسن (عليه السلام)، أنه سأله عن رجل آلى من امرأته، متى يفرق بينهما؟ قال: إذا مضت أربعة أشهر، ووقف، قلت له: من يوقفه؟ قال: الامام قلت: فان لم يوقفه عشر سنين؟ قال: هي امرأته.

From Uthman ibn Isa, from Abu al-Hasan (peace be upon him), that he asked him about a man who takes an oath of abstinence from his wife: When should they be separated? He said: When four months have passed, and he is given an ultimatum. I said to him: Who gives him the ultimatum? He said: The Imam. I said: What if he does not give him an ultimatum for ten years? He said: She remains his wife.

Hadith 28760

عن أحمد بن محمّد بن أبي نصير، عن الرضا (عليه السلام)، قال: سأله صفوان ـ وأنا حاضر ـ عن الايلاء؟ فقال: إنما يوقف إذا قدمه إلى السلطان، فيوقفه السلطان أربعة أشهر، ثمّ يقول له: إما أن تطلّق، وإمّا أن تمسك.

From Ahmad ibn Muhammad ibn Abu Nasr, from al-Rida (peace be upon him), he said: Safwan asked him - while I was present - about ila'. He said: He is only given an ultimatum when he is brought before the authority, then the authority gives him an ultimatum of four months, then says to him: Either you divorce or you retain (your wife).

Hadith 28761

عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: الايلاء: هو أن يحلف الرجل على امرأته أن لا يجامعها، فان صبرت عليه فلها أن تصبر، وإن رفعته إلى الامام أنظره أربعة أشهر، ثمّ يقول له بعد ذلك: إما أن ترجع إلى المناكحة، وإمّا أن تطلّق، فان أبي حبسه أبدا.

From Abu Basir, from Abu Abdullah (peace be upon him), who said: Al-Ila' is when a man swears

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an oath regarding his wife that he will not have sexual intercourse with her. If she bears this patiently, then she has the right to be patient. But if she brings the matter before the Imam, he gives him a respite of four months, then after that he says to him: Either you return to sexual relations, or you divorce her. If he refuses, he imprisons him forever.

Hadith 28762

العياشي في (تفسيره): عن العباس بن هلال، عن الرضا (عليه السلام)، قال: ذكر لنا أن أجل الايلاء أربعة أشهر، بعدما يأتيان السلطان، فاذا مضت الاربعة الاشهر فان شاء أمسك، وإن شاء طلق، والامساك المسيس.

Al-Ayyashi in his Tafsir: From Al-Abbas ibn Hilal, from Al-Rida (peace be upon him), who said: It was mentioned to us that the term for Ila' is four months, after they come before the authority. When the four months have passed, then if he wishes he may keep her, and if he wishes he may divorce her. And keeping her means having sexual relations with her.

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CHAPTER 9

The One Who Takes An Oath Of Abstinence (Al-muli) Is Compelled After The Specified Period To Either Reconcile Or Divorce, And His Divorce Does Not Take Effect With Compulsion Except After Litigation

[Hadith 28763 to 28766]

Hadith 28763

عن أبي بصير ـ يعني المرادي ـ عن أبي عبدالله (عليه السلام)، قال: سألته عن الايلاء ما هو؟ فقال: هو أن يقول الرجل لامرأته: والله لا اجامعك كذا وكذا، ويقول: والله لاغيظنّك، فيتربص بها أربعة أشهر، ثمّ يؤخذ، فيوقف بعد الاربعة أشهر، فان فاء ـ وهو أن يصالح أهله ـ فان الله غفور رحيم، وإن لم يفئ جبر على أن يطلّق، ولا يقع طلاق فيما بينهما ـ ولو كان بعد أربعة أشهر ـ ما لم ترفعه إلى الامام.

From Abu Basir - meaning al-Muradi - from Abu Abdullah (peace be upon him), he said: I asked him about al-ila (oath of abstinence), what is it? He said: It is when a man says to his wife: By Allah, I will not have sexual relations with you for such and such a time, and he says: By Allah, I will make you angry. So he waits with her for four months, then he is taken and made to stand after the four months. If he returns (performs fay') - which is to reconcile with his family - then Allah is Forgiving, Merciful. But if he does not return, he is compelled to divorce. No divorce takes effect between them - even if it is after four months - unless she brings the matter before the Imam.

Hadith 28764

عن أبي بصير، قال: سمعت أبا عبدالله (عليه السلام) يقول: إذا آلى الرجل من امرأته ـ والايلاء أن يقول: والله لا اجامعك كذا وكذا، أو يقول: والله لاغيظنّك ـ ثمّ يغاضبها، ثمّ يتربص بها أربعة أشهر، فإن فاء ـ والايفاء أن يصالح أهله ـ أو يطلق عند ذلك، ولا يقع بينهما طلاق حتّى يوقف، وإن كان بعد الاربعة أشهر، حتى يفيء، أو يطلق.

From Abu Basir, he said: I heard Abu Abdullah (peace be upon him) saying: When a man takes an oath of abstinence from his wife - and al-ila is that he says: By Allah, I will not have sexual relations with you for such and such a time, or he says: By Allah, I will make you angry - then he angers her, then he waits with her for four months. If he returns - and returning (al-ifa') is to reconcile with his family - or divorces at that time, no divorce takes effect between them until he is made to stand, even if it is after four months, until he either returns or divorces.

Hadith 28765

عن محمّد بن الفضيل، عن أبي الصباح الكنانيّ، قال: سألت أبا عبدالله (عليه السلام) عن رجل آلى من امرأته بعدما دخل بها فقال: إذا مضت أربعة أشهر وقف، وإن كان بعد حين، فإن فاء فليس بشيء، وهي امرأته، وإن عزم الطلاق فقد عزم.

From Muhammad ibn al-Fadil, from Abu al-Sabah al-Kinani, who said: I asked Abu Abdullah (peace be upon him) about a man who makes ila' from his wife after he has consummated the

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marriage with her. He said: When four months have passed, he is stopped, even if it is after some time. If he returns (to his wife), then it is nothing, and she remains his wife. If he resolves on divorce, then he has resolved.

وقال: الايلاء: أن يقول الرجل لامرأته: والله لاغيظنك، ولاسوأتك، ثمّ يهجرها، ولا يجامعها حتى تمضى أربعة أشهر، فقد وقع الايلاء، وينبغي للامام أن يجبره على أن يفيء، أو يطلّق، فان فاء فان الله غفور رحيم، وإن عزم الطلاق فان الله سميع عليم، وهو قول الله تبارك وتعالى في كتابه.

He said: Ila' is when a man says to his wife: "By Allah, I will anger you and treat you badly," then he abandons her and does not have intercourse with her until four months pass - then ila' has occurred. It is proper for the imam to compel him to either return or divorce. If he returns, then Allah is Forgiving, Merciful. If he resolves on divorce, then Allah is All-Hearing, All-Knowing. This is the saying of Allah, Blessed and Exalted, in His Book.

Hadith 28766

عن سماعة، قال: سألته عن رجل آلى من امرأته، فقال: الايلاء أن يقول الرجل: والله لا اجامعك كذا وكذا، فانه يتربص أربعة أشهر، فان فاء ـ والايفاء أن يصالح أهله فان الله غفور رحيم، وإن لم يفيء بعد أربعة أشهر حتى يصالح أهله أو يطلق جبر على ذلك، ولا يقع طلاق فيما بينهما حتى يوقف وإن كان بعد الاربعة أشهر فان أبى فرق بينهما الامام.

From Sama'a, who said: I asked him about a man who makes ila' from his wife. He said: Ila' is when a man says: "By Allah, I will not have intercourse with you for such and such time." He waits four months. If he returns - and returning means that he reconciles with his family - then Allah is Forgiving, Merciful. If he does not return after four months until he reconciles with his family or divorces, he is compelled to do so. No divorce occurs between them until he is stopped, even if it is after the four months. If he refuses, the imam separates between them.

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CHAPTER 10

It Is Permissible For The Muli (One Who Takes An Oath Of Abstinence) To Divorce Revocably Or Irrevocably, And That The Conditions Of Divorce Must Be Fulfilled

[Hadith 28767 to 28771]

Hadith 28767

عن بريد بن معاوية، قال: سمعت أبا عبدالله (عليه السلام) يقول الايلاء: إذا آلى الرجل أن لا يقرب امرأته، ولا يمسّها، ولا يجمع رأسه ورأسها فهو في سعة ما لم تمض الاربعة أشهر

From Buraid ibn Mu'awiya, he said: I heard Abu Abdullah (peace be upon him) saying regarding ila (oath of abstinence): When a man takes an oath that he will not approach his wife, nor touch her, nor put his head together with her head, he has leeway as long as four months have not passed.

فإذا مضت أربعة أشهر وقف فامّا، أن يفيء فيمسّها، وإما أن يعزم على الطلاق، فيخلي عنها حتى إذا حاضت، وتطهرت من محيضها طلقها تطليقة قبل أن يجامعها بشهادة عدلين، ثمّ هو أحق برجعتها ما لم تمض الثلاثة الاقراء.

When four months have passed, he is stopped and must either return to her by touching her, or resolve upon divorce and leave her alone until she menstruates and becomes pure from her menstruation, then he divorces her one divorce before having intercourse with her, with the testimony of two just witnesses. Then he has more right to take her back as long as three menstrual periods have not passed.

Hadith 28768

عن أبي مريم، عن أبي جعفر (عليه السلام)، قال: المؤلي يوقف بعد الاربعة الاشهر، فان شاء إمساك بمعروف أو تسريح بإحسان، فان عزم الطلاق فهي واحدة، وهو أملك برجعتها.

From Abu Maryam, from Abu Ja'far (peace be upon him), he said: The muli (one who takes an oath of abstinence) is stopped after four months, and he may choose either retention with kindness or release with excellence. If he resolves upon divorce, then it is one divorce, and he has more right to take her back.

Hadith 28769

عن منصور بن حازم، قال: إن المؤلي يجبر على أن يطلق تطليقة بائنة. وعن غير منصور أنه يطلق تطليقة يملك الرجعة.

From Mansur ibn Hazim, he said: The one who takes an oath of ila (abstinence from his wife) is compelled to divorce with an irrevocable divorce. And from other than Mansur, that he divorces with a divorce in which the man retains the right of return (revocable divorce).

فقال له بعض أصحابه: إن هذا منتقض فقال: لا، التي تشكو فتقول: يجبرني، ويضرّني، ويمنعني من الزوج، يجبر على أن

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يطلقها تطليقة بائنة، والتي تسكت، ولاتشكو، إن شاء طلقها تطليقة يملك الرجعة.

So some of his companions said to him: This is contradictory. He said: No, the one who complains and says: "He compels me, harms me, and prevents me from having a husband," he is compelled to divorce her with an irrevocable divorce. And the one who remains silent and does not complain, if he wishes, he divorces her with a divorce in which he retains the right of return.

قال الشيخ: يمكن حملها على من يرى الامام إجباره على طلاق بائن، بأن يبارئها، ثمّ يطلقها، وأن يكون مختصا بمن تكون عند الرجل على تطليقة واحدة، فيكون طلاقها بائنا.

The Shaykh said: It can be interpreted as referring to one whom the imam sees fit to compel to an irrevocable divorce, by making her enter into a mutual separation agreement (mubarat), then divorcing her, and that this would be specific to one who is with the man on one divorce, so her divorce would be irrevocable.

أقول: ويمكن كون لفظ البائن مستعملا بالمعنى اللغويّ، فانّ كلّ طلاق فهو بائن يوجب التحريم على الزوج ما لم يرجع، ويحتمل الحمل على التخيير، وعلى أنه لو رجع لجبره الامام على طلاق آخر، أو على الكفارة والوطء.

I (Hurr Amili) say: It is possible that the term "irrevocable" is used in the linguistic sense, for every divorce is irrevocable in that it necessitates prohibition for the husband unless he returns. It can also be interpreted as giving choice, or that if he returns, the imam would compel him to another divorce, or to expiation and intercourse.

Hadith 28770

عن أبي بصير، عن أبي عبدالله (عليه السلام) في الرجل يؤلي من امرأته، فمكث أربعة أشهر فلم يفئ فهي تطليقة، ثمّ يوقف، فان فاء فهي عنده على تطليقتين، وإن عزم فهي بائنة منه.

From Abu Basir, from Abu Abdullah (peace be upon him) regarding the man who takes an oath of ila from his wife, then four months pass and he does not return (to her), so it is one divorce. Then he is made to stand (before the judge), and if he returns, she remains with him on two divorces, and if he is determined (not to return), then she is irrevocably separated from him.

Hadith 28771

عن منصور بن حازم، عن أبي عبدالله (عليه السلام)، قال: المؤلي إذا وقف فلم يفئ طلق تطليقة بائنة. وبإسناده عن محمّد بن يحيى، عن أحمد بن محمّد مثله.

From Mansur ibn Hazim, from Abu Abdullah (peace be upon him), he said: When the one who takes an oath of ila is made to stand and does not return, he divorces with an irrevocable divorce. And with his chain from Muhammad ibn Yahya, from Ahmad ibn Muhammad, likewise.

أقول: قد عرفت الوجه فيه، وقد تقدم ما يدل على المقصود، ويأتي ما يدل عليه.

I (Hurr Amili) say: You have already learned the reasoning for this, and what indicates the intended meaning has already been mentioned, and what indicates it will come.

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CHAPTER 11

If The One Who Takes An Oath Of Ila Refuses To Divorce After The Prescribed Period And Does Not Return (To His Wife), The Imam Imprisons Him And Restricts His Food And Drink, And If He Refuses, Then He May Kill Him

[Hadith 28772 to 28778]

Hadith 28772

عن حماد بن عثمان، عن أبي عبدالله (عليه السلام)، قال: المؤلي إذا أبى أن يطلّق، قال: كان أمير المؤمنين (عليه السلام) يجعل له حظيرة من قصب، ويجعله فيها، ويمنعه من الطعام والشراب حتى يطلق.

From Hammad ibn Uthman, from Abu Abdullah (peace be upon him), he said: Regarding the one who takes an oath of ila, if he refuses to divorce, he said: Amir al-Muminin (peace be upon him) used to make an enclosure of reeds for him, place him in it, and prevent him from food and drink until he divorces.

Hadith 28773

عن خلف بن حمّاد، يرفعه إلى أبي عبدالله (عليه السلام) في المؤلي: إما أن يفيء، أو يطلق، فان فعل، وإلا ضربت عنقه. أقول: حمله الشيخ على من يمتنع من قبول حكم الامام.

From Khalaf ibn Hammad, raising it to Abu Abdullah (peace be upon him) regarding the one who takes an oath of ila: Either he returns (to his wife) or he divorces. If he does so (complies), otherwise his neck shall be struck. I (Hurr Amili) say: The Shaykh interpreted this as applying to one who refuses to accept the ruling of the Imam.

Hadith 28774

عن غياث بن إبراهيم، عن أبي عبدالله (عليه السلام)، قال: كان أميرالمؤمنين (عليه السلام) إذا أبى المؤلي أن يطلق جعل له خطيرة من قصب، وأعطاه ربع قوته حتى يطلق.

From Ghiyath ibn Ibrahim, from Abu Abdullah (peace be upon him), who said: When Amir al-Muminin (peace be upon him) dealt with one who took an oath of ila (sexual abstinence from his wife) and refused to divorce, he would place him in a prison made of reeds and give him a quarter of his sustenance until he divorced.

Hadith 28775

محمّد بن علي بن الحسين، قال: روي أنه إن فاء ـ وهو أن يراجع إلى الجماع ـ وإلا حبس في خطيرة من قصب، وشدد عليه في المأكل والمشرب حتى يطلق.

Muhammad ibn Ali ibn al-Husayn said: It has been narrated that if he returns - meaning he returns

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to sexual intercourse - otherwise he is imprisoned in a prison made of reeds, and restrictions are imposed on him regarding food and drink until he divorces.

Hadith 28776

وقد روي أنه متى أمره إمام المسلمين بالطلاق فامتنع ضربت عنقه ؛ لامتناعه على إمام المسلمين.

It has also been narrated that when the Imam of the Muslims orders him to divorce and he refuses, his neck is struck (he is executed) for his refusal to obey the Imam of the Muslims.

Hadith 28777

علي بن إبراهيم في (تفسيره): قال: روي عن أميرالمؤمنين (عليه السلام) انه بنى خطيرة من قصب وجعل فيها رجلا آلى من امرأته بعد أربعة أشهر، وقال له: إما أن ترجع إلى المناكحة، وإما أن تطلق، وإلا أحرقت عليك الحظيرة.

Ali ibn Ibrahim in his Tafsir said: It is narrated from Amir al-Mu'minin (peace be upon him) that he built an enclosure from reeds and placed in it a man who had taken an oath of ila (abstaining from sexual relations) with his wife after four months had passed. He said to him: Either you return to marital relations, or you divorce her, otherwise I will burn down the enclosure upon you.

Hadith 28778

العياشي في (تفسيره): عن صفوان بن يحيى، عن بعض أصحابه، عن أبي عبدالله (عليه السلام) في المؤلي إذا أبى أن يطلّق، قال: كان علي (عليه السلام) يجعل له حظيرة من قصب، ويحبسه فيها، ويمنعه من الطعام والشراب حتى يطلق.

Al-Ayyashi in his Tafsir: From Safwan ibn Yahya, from some of his companions, from Abu Abdullah (peace be upon him) regarding the one who takes an oath of ila - when he refuses to divorce, he said: Ali (peace be upon him) used to make an enclosure of reeds for him and confine him in it, and prevent him from food and drink until he would divorce.

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CHAPTER 12

When The Mu'li (One Who Takes An Oath Of Abstinence) Divorces, The Wife Must Observe The Waiting Period, And If He Returns, He Must Pay Expiation For His Oath

[Hadith 28779 to 28783]

Hadith 28779

عن محمّد بن مسلم، عن أبي عبدالله (عليه السلام)، قال: سألته عن رجل آلى من امرأته حتى مضت أربعة أشهر، قال: يوقف، فان عزم الطلاق اعتدت امرأته كما تعتد المطلّقة، فان فاء فأمسك فلا بأس.

From Muhammad ibn Muslim, from Abu Abdullah (peace be upon him), he said: I asked him about a man who took an oath of abstinence from his wife until four months had passed. He said: He is made to stop, and if he resolves on divorce, his wife observes the waiting period as a divorced woman observes it, and if he returns and keeps her, there is no harm.

Hadith 28780

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام)، قال: سألته عن الايلاء؟ فقال: إذا مضت أربعة أشهر ووقف، فامّا أن يطلق، وإما أن يفيء، قلت: فان طلّق، تعتدُّ عدَّة المطلّقة؟ قال: نعم.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him), he said: I asked him about the ila (oath of abstinence). He said: When four months have passed and he is made to stop, then either he divorces or he returns. I said: If he divorces, does she observe the waiting period of a divorced woman? He said: Yes.

Hadith 28781

عن منصور قال: سألت أبا عبدالله (عليه السلام) عن رجل آلى من امرأته فمرت أربعة أشهر، قال: يوقف فان عزم الطلاق بانت منه، وعليها عدة المطلقة، وإلا كفر عن يمينه وأمسكها.

From Mansur, he said: I asked Abu Abdullah (peace be upon him) about a man who takes an oath of abstinence (ila) from his wife, and four months pass. He said: He should be made to decide - if he resolves on divorce, she becomes separated from him, and she must observe the waiting period of a divorced woman. Otherwise, he should make expiation for his oath and keep her.

Hadith 28782

وعن أبي عبدالله (عليه السلام) أنه سئل إذا بانت المرأة من الرجل، هل يخطبها مع الخطاب؟ قال: يخطبها على تطليقتين، ولا يقربها حتى يكفر يمينه.

And from Abu Abdullah (peace be upon him), when he was asked: When a woman becomes separated from a man, can he propose to her along with other suitors? He said: He can propose to

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her after two divorces, but he should not approach her until he makes expiation for his oath.

Hadith 28783

وعن أبي بصير، عن أبي عبدالله (عليه السلام) في الرجل إذا آلى من امرأته، فمضت أربعة أشهر ولم يفئ فهي مطلقة ثمّ يوقف، فان فاء فهي عنده على تطليقتين، وإن عزم فهي بائنة منه.

And from Abu Basir, from Abu Abdullah (peace be upon him) regarding a man who takes an oath of abstinence from his wife, and four months pass without him returning to her - she is divorced, then he should be made to decide. If he returns to her, she remains with him after two divorces, and if he resolves definitively, she becomes irrevocably separated from him.

أقول: وتقدم مايدل على وجوب العدة، ويأتي ما يدل على وجوب كفارة اليمين.

I (Hurr Amili) say: What has preceded indicates the obligation of the waiting period, and what follows will indicate the obligation of oath expiation.

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CHAPTER 13

The Ruling When A Woman Claims That Her Husband Does Not Have Intercourse With Her, While The Husband Claims He Does Have Intercourse

[Hadith 28784 to 28784]

Hadith 28784

عن إسحاق بن عمار، عن جعفر، عن أبيه إن عليا (عليه السلام) سئل عن المرأة تزعم أن زوجها لا يمسها ويزعم أنه يمسّها؟ قال: يحلف، ثمّ يترك.

From Ishaq ibn Ammar, from Ja'far, from his father that Ali (peace be upon him) was asked about a woman who claims that her husband does not touch her while he claims that he does touch her. He said: He takes an oath, then she is left (with him).

أقول: وتقدم ما يدل على ذلك في العيوب.

I (Hurr Amili) say: What indicates this has already been mentioned in the chapter on defects.

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